Real Estate

Investing in Non-Residential Property: Structuring Acquisitions during Construction

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During wartime, investments in industrial real estate have become increasingly important to support Ukraine's economic resilience. With the adoption of the Law of Ukraine "*On guaranteeing property rights to real estate objects to be constructed in the future*" (the "**Law**"), a new regulatory framework has been introduced to enhance transparency and legal certainty for investments into construction-in-progress. While the Law thoroughly regulates investments in residential construction, it provides limited guidance for non-residential properties, such as commercial or industrial buildings. Let's explore its key aspects related to non-residential properties.

Exclusive Methods for Investments

The Law establishes three exclusive methods for investing in real estate under construction, leading to freehold ownership by individuals or legal entities:

- entering into sale and purchase agreements ("**SPAs**"),
- through a financing fund for construction ("**FFC**"),
- issuing '*targeted*' corporate bonds.

For developers, these impose certain restrictions, particularly for non-residential property construction, where traditional financing tools such as FFC or corporate bonds are often impractical. The only viable option is the direct sale of future real estate objects to investors. This makes previous mechanisms like investment agreements or preliminary SPAs no longer applicable. Developers are directly prohibited from receiving payments (except penalties) under preliminary SPAs. These stricter rules aim to protect investors but reduce financing flexibility for developers.

Objects for Investments

The Law defines two categories of objects that can be sold:

- **Indivisible construction-in-progress objects ("ICIPs"):** indivisible properties under construction, typically warehouses or industrial facilities, registered as a single unit.

- **Future real estate objects ("FROs"):** divisible real estate units (apartments, offices, parking spaces), becoming independent properties upon completion.

While ICIPs generally apply to non-residential property, developers can choose to design projects (e.g., office complexes) as divisible properties. If a non-residential building includes at least two independent units, it qualifies as divisible, allowing the sale of FROs. This approach expands investment opportunities by aligning non-residential projects with the FRO framework.

Conditions for Attracting Funds

Developers are entitled to sell ICIPs/FROs only after obtaining construction permits and registering special proprietary rights (SPR) to such objects in the state register.

These measures enable investors to secure legally recognised rights to their future properties, supported by state guarantees. Thus, investors enjoy higher security, especially in long-term construction projects.

Delegation of Developer's Role

The Law explicitly allows a primary developer ('*land title holder*') to transfer part of responsibilities to a secondary or "*contract*" developer through a notarised development agreement, enabling parties to divide roles and register SPR for specific FROs. For instance, a primary developer might delegate construction management to a secondary developer, while retaining control of the project's financing. Both parties can independently sell their FRO portions or obtain freehold ownership after commissioning. However, this option is limited to divisible construction-in-progress, meaning it applies only to construction of FROs.

Structuring Investment Model

Given the above, Investors in non-residential properties should address the following:

Involvement in Construction

- Development agreement is an option for investors intending to manage construction or finance it directly. Investors seeking minimal involvement can opt for SPAs for ICIPs or FROs.

Divisibility of the Property

- Potential divisibility assessment and consulting with the project designer at early stages are essential.

The new Law increases transparency and protection for investors but presents challenges for non-residential projects. Developers and investors should understand the distinctions between ICIPs and FROs, the conditions for attracting funds, and the delegation of developer roles to mitigate risks effectively. By adopting their strategies to the new requirements, investors can unlock opportunities in development of commercial and industrial property in Ukraine while ensuring financial security.

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